



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
GREAT LAKES NATIONAL PROGRAM OFFICE
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 12 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John M. Van Lieshout
Reinhart Boerner Van Deuren s.c.
P.O. Box 2965
Milwaukee, Wisconsin 53201-2965

Dear Mr. Van Lieshout:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Milsco Manufacturing Company (Milsco), Docket No. CAA-05-2011-0053.

As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 14, 2011.

Pursuant to paragraph 28 of the CAFO, Milsco must pay the civil penalty within 30 days of October 14, 2011. Your electronic funds transfer must display the case name, the docket number, CAA-05-2011-0053, and the billing document number, 2751103A052.

Please direct any questions regarding this case to Janet Carlson, Associate Regional Counsel, at (312) 886-6059.

Sincerely,

Sara Breneman

Sara Breneman
Air Enforcement and Compliance Assurance Section
(MI/WI)

Enclosure

cc: Marcy Toney, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Janet Carlson/C-14J
Bill Yantawood, Supervisor, WDNR
Bill Baumann, Chief, WDNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Milsco Manufacturing Company
Milwaukee, Wisconsin**

Respondent.

) **Docket No. CAA-05-2011-0053**
)
) **Proceeding to Assess a Civil Penalty**
) **Under Section 113(d) of the Clean Air Act**
) **42 U.S.C. § 7413(d)**

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Consent Agreement and Final Order

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Milsco Manufacturing Company (Milsco), a corporation doing business in Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 610(a) of the Act, 42 U.S.C. § 7671i(a), authorizes EPA to promulgate regulations for the sale and distribution of nonessential products containing chlorofluorocarbons.

10. Section 610(d)(1)(B) of the Act, 42 U.S.C. § 7671i(d)(1)(B), states that, effective January 1, 1994, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce any plastic foam product which contains, or is manufactured with a class II substance.

11. Section 601(4) of the Act, 42 U.S.C. § 7671(4), defines a class II substance as each of the substances listed as provided in Section 7671a(b) of this title.

12. Section 602(b) of the Act, 42 U.S.C. § 7671a(b), lists hydrochlorofluorocarbon-141b (HCFC-141b) as a class II substance.

13. Under Section 610(a) of the Act, 42 U.S.C. § 7671i(a), the Administrator of EPA (the Administrator) promulgated the Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances at 40 C.F.R. Part 82, Subpart C (40 C.F.R. §§ 82.60 through 82.70) on December 30, 1993. 58 Fed. Reg. 69675 (December 30, 1993).

14. 40 C.F.R. § 82.64(d) states that, effective January 1, 1994, no person may sell or distribute, or offer for sale or distribution, in interstate commerce any product identified as being nonessential in § 82.70(a) or § 82.70(c).

15. 40 C.F.R. § 82.70(c) states that any plastic foam product which contains, or is manufactured with, a class II substance is nonessential and the sale or distribution of such product is prohibited under 40 C.F.R. § 82.64(d).

16. 40 C.F.R. § 82.62 defines “class II substance” as any substance designated as class II in 40 C.F.R. Part 82, Appendix B to Subpart A.

17. 40 C.F.R. Part 82, Appendix B to Subpart A designates HCFC-141b as a class II substance.

18. The Administrator may assess a civil penalty of up to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred after March 15, 2004 through January 12, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that occurred after January 12, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

21. Milsco manufactures seats for construction, marine, commercial, and residential vehicles at 9009 North 51st Street, Milwaukee, Wisconsin. Milsco also imports and sells armrests for commercial equipment applications.

22. In a letter dated November 16, 2009, counsel for Milsco voluntarily disclosed the following information to EPA on behalf of Milsco:

- a. Milsco first became aware of the potential presence of HCFC-141b in its imported armrests manufactured in China during a conversation with its supplier in early November 2009; and
- b. On November 12, 2009, Milsco received laboratory testing results from Environmental Monitoring and Technologies, Inc., which confirmed the presence of HCFC-141b at 160 parts per billion in armrests manufactured in China that it had been receiving and selling.

23. In the letter dated November 16, 2009, Milsco requested that EPA consider this matter pursuant to EPA's policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations," referred to as the "Audit Policy."

24. On February 1, 2010, EPA issued an information request under Section 114(a) of the Act, 42 U.S.C. § 7414(a), seeking information necessary to determine whether Milsco met the nine conditions of the Audit Policy.

25. In a letter dated March 1, 2010, Milsco's counsel responded to EPA's information request, which stated that Milsco sold approximately 20,903 kilograms of armrests containing HCFC-141b in 2008 and 2009. Milsco did not sell any products containing HCFC-141b before 2008.

26. EPA determined that Milsco violated the requirements of 40 C.F.R. § 82.64(d) and Section 610(d)(1)(B) of the Act. In a letter dated March 23, 2011, EPA determined that Milsco met all of the conditions of the Audit Policy, except “systematic discovery of violations,” which is set forth in Attachment A.

Civil Penalty

27. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the Audit Policy, the facts of this case, Respondent’s cooperation, and Respondent’s prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$15,000.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty by electronic funds transfer, payable to the “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO, and the billing document number.

29. Respondent must send a notice of payment that states the case name, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Janet Carlson at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Janet Carlson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

32. Pursuant to 31 C.F.R. § 901.9 and 31 U.S.C. § 3717, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

34. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

35. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 39, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

36. Respondent certifies that it is complying fully with the Act and 40 C.F.R. Part 82, Subpart C.

37. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

38. The terms of this CAFO bind Respondent, its successors, and assigns.

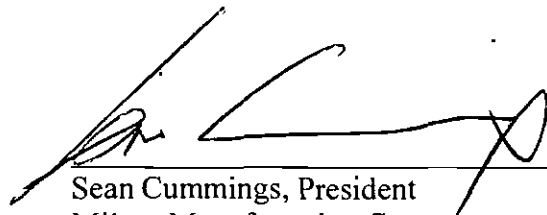
39. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorneys' fees in this action.

41. This CAFO constitutes the entire agreement between the parties.

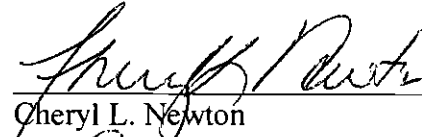
Milsco Manufacturing Company, Respondent

Sept 1, 2011
Date


Sean Cummings, President
Milsco Manufacturing Company

United States Environmental Protection Agency, Complainant

9/9/11
Date



Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Milsco Manufacturing Company
Docket No. CAA-05-2011-0053

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9 - 12 - 11
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY



ATTACHMENT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3560

MAR 23 2011

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John M. Van Lieshout
Reinhart Boerner Van Deuren s.c.
P.O. Box 2965
Milwaukee, Wisconsin 53201-2965

Re: November 16, 2009 Self-Disclosure Letter for Milsco Manufacturing
Company at 9009 North 51st Street, Milwaukee, Wisconsin

Dear Mr. Van Lieshout:

The U.S. Environmental Protection Agency reviewed the additional information that you provided on March 1, 2010 in response to EPA's February 1, 2010 request to provide information regarding the November 16, 2009 self-disclosure letter you submitted on behalf of Milsco Manufacturing Company (Milsco). The November 16, 2009 letter voluntarily disclosed that Milsco's facility in Milwaukee, Wisconsin may have violated the stratospheric ozone protection standards of the Clean Air Act (the Act). Specifically, Milsco discovered that it had been receiving and selling armrests manufactured in China that contain HCFC-141b. As of January 1, 1994, it is illegal to sell or distribute, or offer for sale or distribution, in interstate commerce products containing HCFC-141b, per 40 C.F.R. Part 82, Subpart C. You submitted the November 16, 2009 letter on behalf of Milsco per EPA's policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations," referred to as the "Audit Policy."

EPA has determined that, based on the information provided in the documents mentioned above, Milsco's self-disclosure comports with all of the conditions of the Audit Policy except for "Systematic Discovery," as set forth below.

1. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System: Milsco must have discovered the violation through an environmental audit or a compliance management system reflecting Milsco's due diligence in preventing, detecting, and correcting violations. The Audit Policy defines "environmental audit" as a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to

meeting environmental requirements. Milsco became aware of the presence of HCFC-141b in the armrests it imports from China only during a conversation with its supplier and not through a "systematic" or "periodic" audit. Thus the discovery was triggered by the conversation with the Chinese-based manufacturer and not by an independent audit or compliance management system. Milsco has not met this condition.

2. **Voluntary Discovery:** Milsco must have discovered the violation voluntarily and not through a monitoring, sampling, or auditing procedure that is required by statute, regulation, permit, judicial or administrative order, or consent agreement. Milsco has met this condition.
3. **Prompt Disclosure:** Milsco must have disclosed the violation in writing to EPA within 21 days of discovery. Milsco retained a consultant to perform a voluntary compliance audit of its armrests after a November 2009 conversation with its Chinese-based manufacturer/supplier revealed that HCFC-141b may have been included as a component. Laboratory testing by Environmental Monitoring and Technologies, Inc. confirmed the presence of HCFC-141b in the armrests, at 160 parts per billion. Milsco received the laboratory results on November 12, 2009, and you submitted the self-disclosure on behalf of Milsco on November 16, 2009, which is within the required time frame for prompt disclosure.
4. **Discovery and Disclosure Independent of Government or Third-Party Plaintiff:** Milsco must have discovered and identified the violation before EPA or another government agency likely would have identified the problem either through its own investigative work or from information received through a third party. Milsco has met this condition.
5. **Correction and Remediation:** Milsco must remedy any harm caused by the violation within 60 days from the date of discovery and expeditiously certify in writing to appropriate federal, state, and local authorities that it has corrected the violation. If more than 60 days are needed, Milsco must notify EPA in writing before the 60 day period has passed. Milsco instructed its Chinese-based manufacturer/supplier to cease immediately the incorporation of HCFC-141b in its armrests and to substitute HCFC-134a or similar instead.
6. **Prevent Recurrence:** Milsco must agree to take steps to prevent a recurrence of the violation after it has been disclosed, such as improvements to its environmental auditing efforts or compliance management system. Milsco has made arrangements with its suppliers. See "Correction and Remediation" above. EPA would like to see improvements to Milsco's environmental auditing efforts or compliance management system.
7. **No Repeat Violations:** The same or a closely-related violation must not have occurred at the facility within the past 3 years. The 3-year period begins to run when

the government or a third party has given the violator notice of a specific violation, without regard to when the original violation cited in the notice actually occurred. Milsco states that this is true and that it has never been penalized for its self-disclosed violation by a government agency. Additionally, Milsco certifies that none of its other facilities manufacture any products containing HCFC-141b.

8. Other Violations Excluded: The violation must not have resulted in serious actual harm to human health or the environment or violated the terms of any judicial or administrative order or consent decree. Milsco confirms that there was no serious actual harm or danger to human health or the environment.
9. Cooperation: Milsco must cooperate as required by EPA and provide EPA with the information it needs to determine Audit Policy applicability. At the request of EPA, you submitted on behalf of Milsco follow-up information to the self-disclosure letter on March 1, 2010. EPA believes you have provided sufficient information in these documents such that it may determine if Milsco has met the requirements of the Audit Policy.

After considering these nine conditions, EPA has determined that based on the information provided in the November 16, 2009 self-disclosure letter and the March 1, 2010 response to EPA's February 1, 2010 request to provide additional information, Milsco's self-disclosure abides with all the conditions of the Audit Policy except for "Systematic Discovery." Therefore, EPA has determined that a 75 percent reduction of gravity-based penalties is warranted, as set forth in the Audit Policy.

If you would like to resolve your liability for the violations noted in this letter on the basis of a 75 percent reduction of gravity-based penalties, please contact Ray Cullen, of my staff, at (312) 886-0538 to set up a meeting to discuss an appropriate Consent Agreement and Final Order.

If any information or statement provided by Milsco upon which this determination is based, was false or inaccurate at the time the information or statement was provided, EPA reserves the right to revoke its determination and to assess and to collect any and all civil penalties for any violation described herein. If any information or statement provided by Milsco upon which this determination is based, was false or inaccurate at the time the information or statement was provided, EPA reserves the right to revoke its determination and to assess and collect any and all civil penalties for any violation described herein. Nothing herein shall be construed to limit the authority of EPA and/or the United States to undertake action against any person, including Milsco, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. Furthermore, the determination does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Milsco for any other violation of any federal or state statute, regulation, or permit.

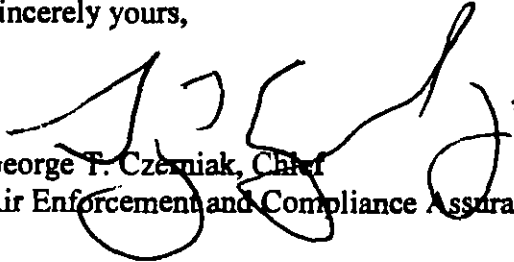
In issuing this determination, EPA expects Milsco to be in full compliance with all

environmental requirements and to conduct the internal procedures necessary to prevent recurrences of violations of environmental requirements.

EPA appreciates Milsco's willingness to self-police, disclose, and correct potential violations at its regulated facilities.

If you have any questions please contact Ray Cullen, of my staff, at (312) 886-0538.

Sincerely yours,



George T. Czerniak, Chief
Air Enforcement and Compliance Assurance Branch

cc: Janet Carlson (C-14J)

Consent Agreement and Final Order
In the Matter of: Milsco Manufacturing Company
Docket No. CAA-05-2011-0053

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0053 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent's counsel by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

John M. Van Lieshout
Reinhart Boerner Van Deuren s.c.
P.O. Box 2965
Milwaukee, Wisconsin 53201-2965

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

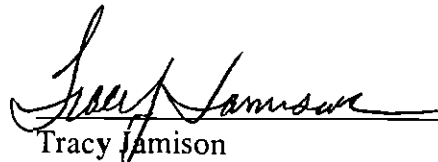
Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency
77 W. Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Bill Yantawood, Supervisor
Wisconsin Department of Natural Resources
Southeast Region
141 NW Barstow Street, Room 180
Waukesha, Wisconsin 53188

Bill Baumann, Chief
Compliance and Enforcement Section
Bureau of Air Management
Wisconsin Department of Natural Resources
100 South Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53707

On the 14th day of September 2011.



Tracy Jamison
Office Automation Assistant
AECAS (MI/WI)

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Docket Number:

CAA 05 2011 0053

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